



**DIVISION OF FINANCE
AND
REGULATION OF INSTANT
LOAN INDUSTRY**

**From The Office Of State Auditor
Claire McCaskill**

*Consumers are not adequately protected from
the risk of unsatisfactory lenders operating in
the state.*

**Report No. 2001-36
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PERFORMANCE AUDIT



Office Of The
State Auditor Of Missouri
Claire McCaskill

May 2001

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State laws favor instant loan lenders, often leaving loan consumers in a debt cycle and paying up to three times the loan's initial value

Current statutes do not limit the interest rates lenders charge a consumer. As a result, lenders commonly charge up to 300 percent interest on a \$500 title loan or 391 percent interest on a \$300 payday loan. (See page 3)

This audit reviewed Missouri's growing instant loan industry and the Division of Finance charged with regulating it. The aspects examined included: typical consumer profiles, instances of severe consumer debt and the adequacy of state regulation.

Loan renewals deepen consumer debt

Lenders renew loans 3.5 more times than they make new loans. These repeated renewals often result in the consumer paying additional fees every time they renew. One customer obtained a \$900 title loan and renewed it three times over three months. By then, she had paid \$902 in interest and fees, but still owed the \$900 loan. (See page 4)

Other states more tightly regulate lenders

Missouri law allows lenders to renew loans up to a year, set unlimited interest rates and concurrently loan money from various instant loan operators. Other states restrict the number of renewals, cap interest rates and prohibit multiple loans from different lenders. (See page 5)

Missouri law also does not give the Division of Finance explicit authority to suspend or revoke the license of a lender who violates state law and has vague requirements for lender examinations. (See page 17)

Lenders can choose which law to follow

Lenders can follow one of three state laws, which define allowable fees, length of term, maximum and minimum amounts, due process and annual reporting requirements. As a result, lenders are subject to inconsistent regulation. For example, title and payday lenders do not have to be audited yearly as do traditional lenders and title lenders do not have to follow consumer protection provisions. (See page 8)

YELLOW SHEET

Consumers unaware of complaint process

Lenders are not required to inform loan customers that they can call the Division of Finance with a question or complaint about a loan. When a customer does complain, the finance division only tracks complaints in which a finance division employee noted the results of the investigation. Complaints that go undocumented cannot be used to track industry activity. (See page 10)

DIVISION OF FINANCE AND REGULATION OF INSTANT LOAN INDUSTRY

TABLE OF CONTENTS

	<u>Page</u>
STATE AUDITOR’S REPORT.	1
RESULTS AND RECOMMENDATIONS.....	3
1. Instant Loans Are Costly to Consumers	3
How instant loans work	3
Cost of an instant loan.....	5
Recommendations.....	7
2. Statutes Governing the Instant Loan Industry Are Not Consistent Between Loan Programs	8
Recommendation	9
3. Consumer Complaint System Needs Improvement.....	10
Processing of consumer complaints.....	10
Consumer awareness of the complaint process	11
Recommendations.....	12
4. Better Procedures and Oversight Are Needed to Ensure Instant Loan Companies Are in Compliance with Applicable State Statutes.....	15
Division of Finance Procedures	15
Inconsistent authority.....	16
Recommendations.....	18
APPENDIXES	
I. OBJECTIVE, SCOPE AND METHODOLOGY	21
II. BACKGROUND	23
III. DEPARTMENT OF ECONOMIC DEVELOPMENT, DIVISION OF FINANCE RESPONSES	26



CLAIRE C. McCASKILL
Missouri State Auditor

Honorable Bob Holden, Governor
and
Members of the General Assembly
and
Department of Economic Development
Division of Finance
D. Eric McClure, Acting Commissioner
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We conducted an audit of state agencies' practices and procedures and of state legal provisions relating to the instant loan industry. This audit was initiated because of concerns over the exorbitant interest rates charged and the rapid growth of the industry over the last several years. This audit focused on instant loan organizations (title loan, payday loan, and traditional small loan lenders) operating within the state of Missouri. The objectives of this audit were to:

- ❑ Review certain laws related to the instant loan industry and determine if changes are needed to improve or clarify existing state laws.
- ❑ Determine whether consumer complaints related to the instant loan industry are being properly addressed.
- ❑ Review applicable state agencies' management controls and practices to determine the propriety and effectiveness of those controls and practices as they relate to the instant loan industry.

We reviewed applicable state statutes, code of state regulations, complaint files, examination reports, and personnel procedures. We interviewed applicable employees and solicited information from other states regarding their regulation of these businesses.

We concluded that current statutes allow the instant loan industry to charge consumers exorbitant fees. State laws governing the instant loan industry are inconsistent and consumers may not receive adequate protection rights. Processing of consumer complaints related to the instant loan industry need improvement and consumer awareness of the complaint process is lacking. Examination procedures and the related laws are not adequate to properly monitor and regulate the instant loan industry.

A handwritten signature in black ink, reading "Claire McCaskill". The signature is fluid and cursive, with the first name "Claire" and last name "McCaskill" clearly distinguishable.

Claire McCaskill
State Auditor

December 27, 2000 (fieldwork completion date)

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RESULTS AND RECOMMENDATIONS

1. Instant Loans Are Costly to Consumers

Instant loan consumers are faced with exorbitant fees for short-term loans, and the problem becomes more compounded if the loan is renewed. Current statutes allow the instant loan industry to charge consumers fees that according to audit surveys were in excess of 300 percent annually. The common fees charged on a \$500 loan by a title lender were 300 percent annually and the fees on a \$300 payday loan were 391 percent. Although the instant loan industry is providing a service to those in instant need of ready cash, better controls over industry practices are needed to protect consumers. Regarding car title loans, the consumer should be given due process before repossessions are made.

Profile of consumers and loans

Title and payday consumers are generally lower income individuals. Title and payday lenders estimated 70 percent of their consumers earned less than \$25,000 annually. According to the US Census Bureau, the median household income (1997 estimate) for Missourians was \$34,502. Also, the Community Financial Services Association of America, which is a national trade group for the payday loan industry, reports that the average payday loan consumer has an average annual household income of \$33,187. In our review of 17 payday consumer files at two licensed payday locations, 10 (or 59 percent) of those consumers had annual incomes less than \$15,000 reported in their financial information questionnaire.

Consumers are generally in the lower income range

The typical title loan amount is \$350 and the typical payday loan amount is \$180. Instant loan operators provide consumers with a method of borrowing to satisfy immediate financial needs without asking a lot of questions about their income, assets, or credit histories. Many title and payday lenders advertise “15-Minute Loans” and argue these short term loans are needed to pay for unexpected expenses or household emergencies and to avoid the possibility of bouncing a check or incurring late payment penalties.

How instant loans work

Car title loans offer consumers a means to get cash with their title being used as collateral. These loans are typically made for 30 days and the consumer’s title is held until the loan is paid. After 30 days, the loan is paid, renewed for another 30-day cycle, or defaulted and the vehicle is repossessed.

Car titles and personal checks serve as collateral

Payday loans allow consumers to obtain cash for a short time until his or her next payday. Consumers issue personal checks to the payday lender, which are held for a period of 14 days. At that time, either the check is deposited, the consumer returns with cash to reclaim the check, or the loan is renewed for another 2 weeks and additional fees are charged.

Consumers can go deeper in debt with instant loans, particularly if the loans are renewed

Complaints from consumers usually concern rates and other aspects of the loan or loan process as shown in the table below.

COMPLAINT	CAR TITLE LOAN	PAYDAY LOAN
Fees and interest rates too high	X	X
Repossessions without notice	X	
Have to use one loan to payoff another		X

The Attorney General's Office received a complaint from a consumer who claimed she was being charged 900 percent annual percentage rate on her title loan. In another complaint, a consumer claimed she was forced to take out five additional payday loans to cover her payday loans currently due.

It is not uncommon for title and payday loans to be renewed several times. Audit results showed that, on average, title and payday lenders make 3.5 times more renewal loans than new loans each month. In our observation of different loans, we noted the following examples that illustrate the effect of the renewal process:

Multiple loans and renewals cause trouble for consumers

- A consumer obtained a title loan for \$300 on December 4, 1999, renewed the loan 9 times over the next several months, and still owed \$33 on October 22, 2000. The consumer paid \$485 in interest and fees, plus \$267 on the principal of the loan for a total of \$752 in repayments on the \$300 loan. She obtained the loan against her 1990 Chevy Beretta valued by the company at \$1,025.
- A consumer obtained a title loan for \$900 on July 7, 2000, renewed the loan 3 times paying \$902 in interest and fees, but made no reductions in the principal amount. The consumer obtained this loan against her 1993 Buick Century. She was 67 years old, living on a fixed income, and as of October 2000 her loan was still open. She has already paid the equivalent of the loan value in fees, and still owes the \$900. This practice will continue until the consumer starts paying on the principal. In this example, the consumer is "hanging on" by paying fees but still has not been able to satisfy the loan.
- A consumer owed \$2,564 in principal, interest, repossession charges, and auction fees after he had stopped paying on his title loan balance of \$442 for approximately 1 year. His vehicle was found and repossessed by the lender and then sold at auction for \$3,000. The lender was operating under Missouri Revised Statutes 2000, (RSMo) Section 367.100, which requires refunds to the consumer for any excess amount received in a sale after the lender is made whole. Therefore, the consumer received a refund of \$436 (\$3,000-2,564).
- A consumer obtained a \$100 payday loan on August 26, 2000, renewed the loan 4 times, paid the lender \$98 in interest through October 21, 2000, and still owed \$93 on the loan in December 2000.

Consumer hangs on in never-ending cycle

- A consumer obtained a \$200 payday loan on August 22, 2000, and renewed the loan 7 times paying \$240 in fees, and still owed \$230 on the loan.
- A consumer obtained a \$200 payday loan on June 23, 2000, and renewed the loan 11 times paying \$278 in fees, and still owed \$92 on the loan in December 2000.

Missouri Statutes allow lenders to extend loans and charge fees

Missouri statutes allow the renewal process for title loans to extend title loans for more than 1 year. Section 367.512 (4), RSMo states: “The title lender shall renew the title loan agreement for additional thirty-day periods upon the consumer’s request and the payment by the consumer of any interest and fees due at the time of such renewal, however upon the third renewal of the title loan agreement, and each subsequent renewal thereafter, the consumer shall reduce the principal amount of the loan by ten percent of the original amount of the loan until such loan is paid in full.” The principal reduction requirement provides a maximum of 13 months to pay off a title loan.

State Regulation (4 CSR 140-11.010 (5)) limits the term of a payday loan to 10 months; however, as illustrated in the examples above, significant fees are accrued on these types of loans when the loans are extended for several months.

The State of Kentucky has a statute that limits title loan renewals to no more than three times in succession. Kentucky also passed legislation in 1998 capping title loan interest rates at 36 percent per year. Kentucky Division of Finance and Banking officials stated the cap on interest rates caused the title loan industry to leave the state.

Kentucky has strict laws for title and payday loans

The State of Kentucky also has a statute that prohibits payday lenders from making loans to a consumer that already has \$500 in outstanding payday loans from any lender across the state. This would prohibit consumers from obtaining additional loans in order to pay off existing payday loans from different lenders.

Reducing the number of renewals could help some consumers avoid the cycle of debt that results from continually renewing these types of loans while allowing the industry to maintain its presence in Missouri. In addition, the statutes should provide more stringent guidelines to limit the total payday loan balance that consumers can obtain from all lenders.

Cost of an instant loan

Audit results showed that the common fees charged on a \$500 loan by a title lender were 25 percent per month or 300 percent annually. The title lender fees ranged from 183 percent to 377 percent annually. The fees on a \$300 payday loan ranged from 217 percent to 391 percent with the most common fees being 391 percent.

The Community Financial Services Association of America argues that expressing the terms of an instant loan in the form of an annual percentage rate is not a fair comparison because it is a calculation made over a 12-month period and instant loans are generally made for a 30-day or

14-day period. However, as previously illustrated above, many instant loans are renewed several times often spanning several months.

Title lenders are not required to itemize their fees to illustrate that these charges are strictly to cover the ordinary cost of operations. According to Section 367.515, RSMo: “The maximum rate of interest that a title lender shall contract for and receive for making and carrying any title loan authorized by Sections 367.500, RSMo to 367.530, RSMo shall not exceed one and one-half percent per month on the amount for such loans. Title lenders may charge, contract for, and receive a fee, which shall not be deemed interest, to defray the ordinary cost of operations.” In addition to the ambiguous fees allowed by statute, the Division of Finance does not have appropriate guidance to ensure this provision is enforced and that lenders are only charging fees to defray ordinary operating costs.

Statutes are ambiguous regarding allowable fees

Section 408.500, RSMo governs the rates for payday loans and provides: “...Lenders shall file a rate schedule with the director, who upon review, shall approve the rates comparable with those lawfully charged in the marketplace for similar loans. In determining marketplace interest rates, the director shall consider the appropriateness of the rate requests made by lenders and rates allowed on similar loans in the state contiguous to Missouri...” The director from the Division of Finance has approved three different rate schedules. Those rates are the Missouri rate, Tennessee rate, and Oklahoma rate as noted below:

- Missouri rate: \$10 loan fee plus 5 percent interest per month (or 14-day cycle of loan).
- Tennessee rate: 15 percent fee with a maximum fee of \$45.
- Oklahoma rate: Rate varies¹ and is established annually by the State of Oklahoma.

Payday lenders can be approved for more than one of the above rate schedules. For example, lenders can charge the Missouri or the Tennessee rate depending on which rate is most beneficial (generating the greatest profit) to their particular business.

Title and payday lenders operating under Section 367.100, RSMo can charge any rate that is agreed upon by both the consumer and the lender. Payday lenders can operate under Chapters 408 or 367, RSMo.

Conclusion

The instant loan industry views itself as providing a service to those in need and that high fees are a necessary part of the business in order for them to cover losses and stay in business. However, the state has a role to play in protecting the consumer, and measures can and should be taken to ensure the instant loan industry conforms to basic rules of fairness to the consumer. Although the statutes limit the fees that title loan companies may charge to defray the cost of

¹ Rate varies by loan and loan amount. There is no one single rate for the industry. Based on our limited review, there were not many loans in Missouri that used this rate.

operations, ordinary operating costs are not defined. Consumers need protection with due process rights before loan companies can repossess vehicles.

Recommendations

We recommend the General Assembly:

- 1.1 Consider reducing the number of renewals allowed by statute.
- 1.2 Readdress the statutes to limit the total payday loan balance that consumers can obtain from all lenders.
- 1.3 Consider requiring due process for consumers before vehicles are repossessed and sold.
- 1.4 Consider defining the operating costs charged by title lenders.

2. Statutes Governing the Instant Loan Industry Are Not Consistent Between Loan Programs

Consumers cannot rely on consistent protection from the state among the various instant loan programs because the laws establishing the programs did not consider the impact on the consumer when the programs were approved. Instant loan companies can operate under three different sections of the Missouri Revised Statutes (RSMo) and pick and choose which statute serves them best without concern for consumer interests. Some title and payday lenders operate under Section 367.100, RSMo (traditional lending) while others operate under the specific sections for title or payday lenders, Sections 367.500, RSMo (title loans) and 408.500, RSMo (payday loans), respectively. These laws vary in loan terms including allowable fees, length of term, maximum and minimum amounts, due process, and annual reporting requirements. As a result, consumers are not provided adequate protection related to the title and payday industry.

Lenders participate in all three statutory programs

Of the approximately 558 traditional lenders currently operating under Section 367.100, RSMo across the state, 109 of these companies were in the business of making title loans, 95 were in the business of making payday loans, and 50 of these companies made both title and payday loans. There are currently 113 title and 655 payday lenders operating under the specific statutes set forth for those types of lenders.

The chart below summarizes some of the primary differences in instant loan programs based on their controlling statute:

<i>Description</i>	<i>Traditional Lending (Section 367.100)</i>	<i>Title Loans (Section 367.500)</i>	<i>Payday Loans (Section 408.500)</i>
<i>Maximum loan amount</i>	No limit	\$5,000	\$499.99
<i>Maximum term</i>	No limit	30 days	10 Mos
<i>Refund for early payoff</i>	Yes	No	No
<i>Consumer protection</i>	Yes	No	No
<i>Annual reporting requirement</i>	Yes	No	No
<i>Annual audit requirement</i>	Yes	No	No
<i>Number of licensees</i>	558	113	655
<i>Charge for loan</i>	No limit	1.5% per month + fees	*

*Rates for payday loans are approved by the Division of Finance. The most common rates are the Missouri rate which is \$10 plus 5 percent per month and the Tennessee rate, which is 15 percent per month with a maximum of \$45. Controlling statutes for each type of lender are at Appendix II, page 23.

Specific inconsistencies that affect consumers include:

- Title and payday lenders are not subject to the same annual reporting and audit requirements as with traditional lenders.
- Title loans are not subject to any of the consumer protection provisions found in traditional loans. This means vehicle repossessions can occur without any notice, and the lender does not have to give the consumer an opportunity to cure the default.
- Title loans also are not subject to the Uniform Commercial Code in regard to refunding. This means that if a sale of repossessed property occurs and there is a surplus over what the consumer owes, the lender may keep the surplus. If there is a deficiency, then the lender must absorb the loss.

The Division of Finance has worked with the legislature by proposing changes to statutes to address some of these inconsistencies.

Conclusion

Although title loans, payday loans, and traditional loans serve the purpose of providing cash to people in need, the statutes within which each loan program was established are not consistent. The lack of due process in the title loan program and the differences in allowable fee charges in all loan programs cause considerable problems for the consumer—problems that should be avoided.

Recommendation

We recommend the General Assembly:

- 2.1 Consider reexamining the provisions of all instant loan programs and determine if there is a need to make them more consistent and less likely to cause additional hardships for consumers.

3. Consumer Complaint System Needs Improvement

Consumer complaint procedures could be improved by establishing specific standards for handling complaints, centralizing the complaint function, and heightening consumer awareness. State laws regulating the instant loan industry do not specify how consumer complaints are to be recorded and processed. Furthermore, state law does not designate the Division of Finance as the agency responsible for handling consumer complaints. Some complaints are made directly to the Division of Finance while others are made to the Attorney General's Office. Established guidelines or statutes for handling complaints would ensure that complaints are being processed by an agency with the authority and influence to resolve complaints. Centralizing complaints would ensure that all complaints are being considered and processed appropriately.

Processing of consumer complaints

After interviewing applicable employees, and benchmarking with other states, we determined improved procedures and more detailed statutes governing these lenders could address consumer complaints more efficiently.

Division of Finance procedures

The Division of Finance could improve their procedures for handling complaints. The division has not established specific standards for handling complaints and, cannot assure that all complaints are properly investigated and resolved. Also, procedures for handling complaints are not explicit in the Missouri Statutes or in the Code of State Regulations.

Some complaints are handled over the telephone by the senior counsel, while others are forwarded to examiners for investigation. After examiners investigate consumer complaints, some examiners document their findings in a memo that is logged on the division's database while others have no documentation of the follow-up. The division's database, therefore, only tracks complaints in which written correspondence has been generated and excludes those complaints that were handled by telephone. Established procedures for handling complaints would ensure that all consumer concerns are being processed appropriately. Division personnel stated that they did not have the resources to document the high volume of telephone complaints and that they were confident that the complaints were handled properly. The audit concern is that even field examiners are not documenting all telephone complaints. Complaints that are not documented cannot be used to track industry activity.

The division's senior counsel and examiners are responsible for receiving and resolving complaints. These functions include taking consumer complaint telephone calls or written complaints from consumers, investigating the circumstances of the complaint, and resolving the complaint to the satisfaction of both the consumer and the lender.

The regulatory authority for the Division of Finance can be found in Sections 367.160, 367.503, and 408.500, RSMo, and 4 CSR 140-11.020 of the Code of State Regulations, however, these regulations do not describe specific procedures for handling complaints. The Consumer Credit Division within the Division of Finance is responsible for

regulating instant loan businesses. The Consumer Credit Division is staffed with one senior counsel, nine examiners, and two support staff.

Division of Finance helps consumers resolve complaints

Audit results showed the following examples where the division's influence was used successfully to help consumers settle disputes with lenders:

- A consumer claimed she had made several payments on her title loan but still owed the company money. The division found the consumer had borrowed \$300 in March 1999, and after six renewals had paid \$362 in interest and \$156 on the principal of the loan for a total of \$518. The consumer still owed \$191 in interest and principal on the balance of the loan. The division contacted the lender who agreed to settle the account for \$39. The consumer in this case was very pleased with the outcome.
- A consumer claimed a payday lender presented her check to the bank for payment despite making other arrangements for the payment. She also complained she had only signed one loan contract promising to pay \$345 despite the loan being renewed six times. The division found the consumer had paid a total of \$615 of which \$270 was for renewal fees. The consumer signed only one loan agreement, and therefore, was not responsible for the renewal fees. The division contacted the lender who agreed to return the \$270 in renewal fees to the consumer.
- A consumer claimed proper delinquent notices had not been sent and his vehicle was wrongfully repossessed. The consumer owed \$491 in principal and interest after falling behind on his loan. The division handled negotiations between the consumer and lender who agreed to settle for \$350. This company was licensed under Chapter 367, RSMo but was doing business as a title lender, and therefore, was required to send default notices before repossessing the consumer's vehicle. The division found that the notice of default and right to cure had been sent, but was deficient because the amount due was inaccurate.

Division of
Finance comes
to the aid of
consumers

The State of Kentucky has specific statutes describing procedures for handling complaints related to payday lenders. The statutes describe procedures for filing complaints, and describe who is responsible for receiving and investigating complaints. Similar procedures could be established for all businesses operating in the instant loan industry.

Consumer awareness of the complaint process

Consumers are not adequately informed of which state agency to contact with complaints or questions. Loan documents do not disclose the Division of Finance as the contact agency to handle complaints, nor is this information prominently posted in lenders' offices. Neither the Division of Finance nor state statutes require lenders to inform consumers of whom to contact with

More can be
done to
educate
consumers

questions or concerns. The Division of Finance maintains a consumer complaint form on their web site; however, they do not distribute any other informational packets or brochures that explain complaint procedures.

The Attorney General's Office personnel maintain a consumer hotline, distribute informational packets, and maintain a consumer complaint form on their web site. There is a consumer advocate that helps inform consumers of their rights. The Attorney General's Office will also refer consumers to the Division of Finance in cases where the division's authority and expertise will assist the consumer. Informing consumers of a contact for complaints or questions would help ensure that public concerns are being adequately addressed.

The State of Arkansas requires payday lenders to print on the loan application the telephone number and address of the state agency that handles consumer complaints and questions. The State of Kentucky requires payday lenders to post the state's toll-free complaint number at lender locations. Similar procedures could be established for all businesses operating in Missouri's instant loan industry.

Improving consumer awareness of the Division of Finance's influence would benefit consumers that need a mediator to resolve conflicts with instant loan businesses.

Conclusion

With a few changes in the law, the state could improve the consumer complaint process along with improving consumer awareness related to the instant loan industry. Current weaknesses in the law and in the practices of various state agencies have left the potential for consumer concerns to remain unresolved.

Recommendations

We recommend the Division of Finance:

- 3.1 Develop specific guidelines for handling complaints related to the instant loan industry to ensure consumer complaints are handled in a consistent manner. This would include developing specific procedures for processing complaints.
- 3.2 Consider developing methods to improve consumer awareness of the complaint process.

We recommend the General Assembly:

- 3.3 Consider assigning the responsibility for consumer complaints to the Division of Finance.

Division of Finance Comments

Full text comments are included in Appendix III, page 26.

Recommendation 3.1- *The Auditor's Report is not accurate in stating that "the Division has not established basic² standards for handling complaints." The Division does have the very highest standards for assisting consumers with complaints. These standards, which were explained in detail to the Auditor's Office personnel, have been followed routinely for more than at least twenty years. It is true that we had not committed our standards and procedures to writing. We have now done so and the written procedures are attached. The written guidelines follow our previously established procedures, which have been very effective and efficient in our effort to assist consumers in the complaint process. We have also attached the results of a survey of complainants conducted last year. The survey asked the complainants to rate satisfaction with our performance. The overall grade was 4.19 on a scale of 1 to 5, with 5 being the best. The survey was sent to all complainants filing a written complaint between January and July 2000.*

The report discusses our record keeping of complaints. Telephone initiated complaints are frequently resolved quickly and efficiently, often with all parties satisfied. It is our policy that all complaints handled in the field be documented with a memo either via mail or e-mail (of course, we cannot say that there is never a lapse). Whenever a complaint does begin with or result in a written document, a file is created. We have established a good record keeping system for written complaints. Complaints received and handled exclusively by phone are rarely documented due to volume and limited resources. The recommended suggestion in the audit to keep written records on every telephone complaint would result in more time spent on internal paperwork and less time spent on solving consumers' problems.

Recommendation 3.2- *The report calls for efforts in getting this Division's name, address, and telephone number (preferably toll-free) before the borrowing public. We agree that consumer awareness of our complaint process should be improved. We will send a directive to all of our consumer credit licensees, requesting that they conspicuously post in their lending offices the Division's address and telephone number along with an explanation to consumers to call the Division for consumer complaint assistance and resolution. We will also recommend that legislation be adopted requiring this posting. (We do not believe, however, including the address of the Division in all contracts is advisable as one such company already does this and we frequently receive payments from borrowers who mistake our address for that of the lender. Also, because the Attorney General already has a consumer toll-free hotline from which some complaints are referred to us, we believe creating a second hotline for use by the Division is not the most efficient way to address the issue).*

State Auditor Comments

The response to recommendation 3.1 acknowledges the need for a formalized complaint and resolution policy; however, the division does not plan to change the practice of not documenting telephone complaints. The concern noted during our discussions with the field examiners handling consumer complaints was that there were vast inconsistencies on how complaints were handled and documented. Although the division's survey noted high satisfaction for those filing

² The wording was changed to "specific" rather than "basic" based on the Division's response.

a written complaint, there is no assurance that this satisfaction rate is representative because division personnel do not track telephone complaints and could not include them in the survey. Division managers acknowledged that telephone complaints represent a high volume of complaints. With proper forms and training on questions to ask, call takers can document as the call is in process.

The division's response implies that the audit report was advocating establishing another hotline. We do not believe another hotline is needed nor did we suggest this. We are suggesting that the Division of Finance's complaint number be posted in a prominent place for the borrowers to observe.

4. Better Procedures and Oversight Are Needed to Ensure Instant Loan Companies Are in Compliance with Applicable State Statutes

Examination procedures and related laws are not adequate to properly monitor and regulate the instant loan industry. The Division of Finance does not have any written policies governing when to examine lending locations. Some locations were examined annually when others were not examined. Follow-up visits to locations were not consistent with established procedures. Some of the locations receiving a satisfactory rating were re-examined while other locations receiving a low satisfactory rating were not re-examined. As a result, consumers are not adequately protected from the risk of unsatisfactory lenders operating in the state.

Division of Finance Procedures

The Division of Finance is responsible for examining payday lenders, title loan companies, and other small loan companies licensed under Chapter 367, RSMo.

The division's examination process includes the rating of a lender on a scale of 1 to 5. The rating is a reflection of how the lender complies with state law. Guidelines were not specific on how the ratings are assigned, and the ratings are primarily based on the judgment of the examiner and his personal criteria and experience. The definitions that accompany each of the ratings are as follows:

Rating of 1—The company is in a strong compliance position.

Rating of 2—The company is in a generally strong compliance position.

Rating of 3—The company is in a less than satisfactory compliance position.

Rating of 4—The company requires close supervisory attention and monitoring to promptly correct the serious compliance problems discussed.

Rating of 5—The company is in need of the strongest supervisory attention and monitoring.

Better targeting procedures are needed to ensure high risk lenders are selected for review

Instant loan companies are not being examined in a consistent manner. In 1999, the Division of Finance examined some instant loan companies twice, while other companies were not examined at all. The division examined 299 of the 629 payday loan companies (48%) and 28 of the 135 title loan companies (21%) in 1999. A review of the ratings given to payday and title lenders in 2000 and 1999 showed a significant percentage of the lenders received less than satisfactory ratings (rating of "3" or higher) as shown below:

Percent Receiving Less Than Satisfactory Ratings		
Year	2000	1999
Payday lenders	18	11
Title lenders	24	78

The chart shows that the Division of Finance may be targeting the wrong lenders in their examination program. The title lender industry has the higher incidence of less than satisfactory outcomes but receives the lower incidence of examinations (21%), while the payday lenders have the lower incidence of low ratings and higher incidence of examinations (48%).

An analysis of the ratings given disclosed that the Division of Finance did not have a risk management plan to determine which lenders to examine. As a result, lenders in strong compliance were often re-examined while lenders found not to be in compliance were not re-examined. For example:

Lenders
should be
targeted based
on risk

- 45 payday lenders received a “1” rating in 1999 (the best possible) and were re-examined and given a “1” rating in 2000.
- 19 of 34 payday lenders and 12 of 22 title lenders that received a less than satisfactory rating (a rating of “3” or higher) in 1999 had not been re-examined as of November 2000.
- 3 payday lenders and 1 title lender received “5” ratings (the worst possible) in September and December 1999, but were not re-examined within the 90-day timeframe established by Division of Finance policy. One of these lenders had not been re-examined as late as November 2000.

Division personnel explained that sometimes they do not review a “5-rated” firm because they are part of a chain of lenders, and a subsequent examination at another chain location would disclose resolution of a systemic problem that was noted at the “5-rated” firm.

Inconsistent authority

The statutes do not provide acceptable levels of regulatory and enforcement authority. Statutory modifications related to the examination process are needed to ensure examinations are conducted in a timely and consistent manner.

Regulatory Authority

The Division of Finance derives its regulatory authority from Sections 367.160, 367.503 and 408.500, RSMo, and 4 CSR 140-11.020, however, these sections do not provide consistent, specific guidelines for examinations.

Section 367.160, RSMo, is very precise in granting the authority to perform an examination of small loan companies and states:

“The director, his deputies and examiners shall have full power and authority at any time and as often as reasonably necessary to investigate or examine the supervised business, affairs and loans made in the supervised business of any registered lender . . . for the purpose of ascertaining whether or not the lender, or such person, firm, partnership or corporation is complying with the provisions of sections 367.100 to 367.200 and the laws of Missouri relating to consumer credit loans . . .”

This section also states that if it is necessary to examine a lender more than once in a particular year the lender is responsible for paying for the actual travel expenses and a per diem of \$100 per examination official required for the examination. The division indicated as many as 5 lenders were examined more than once in 2000; however, they have not attempted to charge the lenders for the related expenses resulting from the second examination.

Section 367.503, RSMo, is less precise regarding examinations of title lenders and provides: “The division of finance shall have responsibility to administer and regulate the provisions of sections 367.500 to 367.530.”

Section 408.500, RSMo, is again less precise regarding examinations for payday lenders and states:

“...The director may promulgate rules regarding the computation and payment of interest, contract statements, payment receipts and advertising for loans made under the provisions of this section... ” State Regulation (4 CSR 140-11.020) provides that the books and records of these lenders shall be made available to the examiners from the Division of Finance.

Using benchmark comparisons with other states, the audit determined that other states have very distinct guidelines for examinations. Drafting similar guidelines would help examiners ensure that lenders are in compliance with the law.

Other states have specific examination guidelines

- The State of Illinois requires all title and payday loan companies to be examined annually. The examiner we contacted in the State of Illinois indicated there are approximately 700 title and payday loan companies in Illinois, and the state employs 8 examiners.
- The State of Iowa requires all payday loan companies to be examined annually and costs incurred in an examination are to be paid by the lender.

The State of Kentucky requires payday lenders to be examined, and the statute further states the lenders shall pay a fee sufficient to cover the cost of the examination based upon fair compensation for time and actual expense as established by administrative regulations of the department. The manager we contacted in the State of Kentucky indicated there are approximately 390 payday loan companies licensed by the state and the state employs 3 examiners.

Enforcement Authority

Missouri statutes do not provide the Division of Finance with explicit authority to suspend or revoke the license of a title or payday lender who is in non-compliance with the law. The division has worked with the legislature in proposing changes to the current statutes governing these types of lenders and has attempted to make this authority more

Division of Finance needs enforcement authority

specific in the statutes. The division also helped propose changes that would allow them to issue a cease and desist order enforceable by a civil penalty of not more than \$1,000 per day for each day the lender continues to be in non-compliance with the law.

The State of Kentucky has specific statutes allowing the Commissioner of the Division of Finance to suspend or revoke a payday lender's license for any type of fraud, dishonesty, or misrepresentation.

The State of Iowa also grants the Superintendent of Banking the authority, after notice and hearing, to suspend or revoke any license issued to a lender. In addition to this authority, the superintendent can issue a cease and desist order if they believe the lender is engaged in behavior that violates Iowa statutes or administrative rules. Further, if the superintendent finds, after notice and hearing, a lender has violated statutes, administrative rules, or an order of the superintendent, the superintendent may order the person to pay an administrative fine of not more than \$5,000 for each violation in addition to the costs of investigation.

The Missouri legislature could improve the statutes by adding provisions similar to those described above. Statutory guidance on examination procedures would help ensure examinations are being conducted in a timely and consistent manner.

Charging a mandatory fee for examinations could help absorb the cost of any additional examiners required to perform more timely examinations. Finally, granting the Division of Finance the authority to suspend or revoke a license for those companies that are not fully complying with the law could encourage more lenders to comply with the laws.

Conclusion

The state could improve examinations practices and procedures for the instant loan industry. Current weaknesses in the law and in the division's practices have allowed some instant loan businesses to operate without an examination. Some lenders were not reexamined after being found in violation. Thus, the consumers are not properly protected.

Recommendations

We recommend the Division of Finance:

- 4.1 Develop specific guidelines to ensure instant loan businesses are examined in a consistent manner.
- 4.2 Develop a timetable for examinations to be performed and ensure subsequent examinations of businesses that received less than satisfactory ratings are performed on a timely basis.

We recommend the General Assembly:

- 4.3 Assist the Division of Finance in overseeing the instant lending industry by enacting laws that will allow them to enforce the statutes.

Division of Finance Comments

Full text comments are included in Appendix III, page 26.

Recommendation 4.1- *The Auditor's report is not fully accurate when it states "there are no specific guidelines on how the ratings are assigned." In fact, as the report acknowledges, we do have guidelines on how ratings are assigned. Further, as the report does not mention, these general guidelines become more specific as they are applied in each examination to a number of specific categories, such as credit insurance, various types of lending and management. Each institution gets a rating in each applicable category and then gets an overall rating. We will revise our general guidelines to word them as objectively as possible, keeping in mind that the judgment of the examiner is a material part of reaching examination conclusions. The report addresses section 367.515, which allows title loan companies to assess a fee to "defray" costs. The report questions the Division's assessment of compliance with this section. We note that the report on the last page states that the law provides "no limits set on the fees" for title loan companies. One of the reasons we have recommended changing this statutory language is that it can result in an absurdity, an inefficient company which could demonstrate higher costs to defray would be able to legally charge a higher fee than an efficient operation, in no event would this address the issue at hand. Pending legislation, if passed, will end confusion regarding the ambiguous fee language in the current law. The cover letter that accompanies the Auditor's report states that "Examination procedures and the related laws are not adequate to properly monitor and regulate the instant loan industry." The report does not appropriately support the conclusion that the Division's examination procedures are inadequate to properly monitor our licensees. In fact, the report does not cite a single instance in which the laws were not properly enforced against licensees. However, the Division agrees that the laws governing payday and title loan companies are in need of revision. We are supporting HB 738 to accomplish this goal. The report notes a lack of consistency in authority granted by the various statutes and notes that the title loan law does not require certain basic consumer protections or compliance with the UCC. We, too, have been concerned about the absence of and inconsistencies in consumer protection, if passed; HB 738 should correct these problems.*

Recommendation 4.2- *As explained to the Auditor's Office personnel, the Division has had a policy for frequency of examinations. We agree with the recommendation to commit these examination frequency guidelines to writing. We also believe the policy can be improved upon. Since the audit, we have begun work on a more formal examination policy. We are now generally requiring repeat 4 and 5 rated and even some problem 3 rated companies to come to Jefferson City to discuss their problems and plans for improvements. We believe a large part of the problems with apparent examination procedure inconsistencies stems from the very rapid growth in the number of licensed consumer finance companies, which now total approximately 1,800, many of them very new. Many of the title loan companies were initially licensed in 1999 as the law only became effective in late 1998. It is common for initial examinations to have less than satisfactory results, but we generally see significant improvement immediately thereafter. Our field examiners often provide training to the new companies and work closely with them to improve their compliance. We have increased our consumer credit field examiner staff by 50% (from 6 to 9) in the past two years. We expect compliance to improve as the newer licensed offices get past the initial review and gain experience.*

State Auditor Comments

The response to recommendation 4.1 does not address the issue of examining instant loan businesses on a consistent basis, which is addressed by the division in their response to recommendation 4.2: “We agree with the recommendation to commit these examination frequency guidelines to writing. We also believe that the policy can be improved upon.” The State Auditor realizes professional judgment by the examiners plays a material part in the rating of each institution.

The objection raised in the response regarding the rating system does not address the concern on consistent examinations of the businesses. As noted in the report, examiners were re-examining compliant lenders and not examining less than satisfactory lenders.

The response that the audit report did not appropriately support a conclusion that the division’s examination procedures are inadequate to properly monitor licensees does not properly present the audit position. As the audit noted, there was not any consistency in the selection process of which lenders received examinations and re-examinations. The division examined approximately one-half of the payday loan companies and one-fifth of the title loan companies during 1999. The current laws pertaining to the payday and title loan industry heavily favor the industry, leaving the consumer a potential victim of endless debt. The auditors based their conclusion on the low number of entities examined, as discussed above, and the inconsistent re-examination process as discussed in the report. There was no need to find or cite specific examples to support this conclusion. The main issue is the unknown—the 50 percent of payday lenders and the 80 percent of title loan companies that were not examined.

OBJECTIVE, SCOPE AND METHODOLOGY

Objective

The objectives for this audit were to (1) review certain laws related to the instant loan industry and determine if changes are needed to improve or clarify existing state laws (2) determine whether consumer complaints related to the instant loan industry are being properly addressed and (3) review applicable state agencies' management controls and practices to determine the propriety and effectiveness of those controls and practices as they relate to the instant loan industry.

Scope and Methodology

We reviewed applicable state statutes, code of state regulations, complaint files, examination reports, and personnel procedures. We interviewed applicable employees and solicited information from other states regarding their regulation of these businesses.

We mailed questionnaires to 213 car title lenders, payday lenders, and traditional small loan lenders. The questionnaire asked these entities to:

- ❑ Provide demographic information for their typical consumer. This included age and income.
- ❑ Identify their default rate.
- ❑ Report the amount of a typical loan and fees on certain loan amounts.
- ❑ Report the average number of new loans made in 1 month (2 weeks for payday lenders) and the corresponding number of renewal loans made for that same time period.

The questionnaire was sent to the following types of lenders:

Type of Lender	Number
Title	113
Payday	50
Small Loan	50

We performed analytical procedures to gain assurance that the financial data and the responses to the other survey questions were reasonable. We made additional inquiries to many lenders and sought additional clarification to the survey responses as deemed appropriate. We did not visit the entities or review documentation to support the financial information provided.

We also reviewed the requirements of Sections 367.100 to 367.215, 367.500 to 367.533, and 408.500, RSMo 2000.

APPENDIX I

The audit was made in accordance with applicable generally accepted government auditing standards and included such tests of the procedures and records as were deemed appropriate under the circumstances.

BACKGROUND

Traditional Consumer Lenders

Consumer credit lending has traditionally been confined to Sections 367.100-367.215, RSMo and the supporting Sections 408.100-408.210, RSMo. The original laws, enacted in 1951, have been modified from time to time, to increase the return to lenders, and in 1979 Sections 408.551-408.562, RSMo established consumer protection provisions. In 1998, the interest rate was deregulated eliminating the statutory limit on interest rates.

Sections 367.100-367.215, RSMo in summary include the following provisions:

- ❑ Requires lenders to be registered with the director of the Division of Finance and pay an annual registration fee of \$300.
- ❑ Gives the director the option of requiring lenders to obtain a \$1,000 bond.
- ❑ Requires lenders to file an annual report containing specific information with the director.
- ❑ Grants the director, or his examiners, the authority to conduct examinations and investigate complaints.
- ❑ Gives the director the authority to suspend or revoke a lender's certificate of registration after a hearing where an order of show cause has been entered showing grounds for the suspension or revocation.
- ❑ Creates a penalty for violation of the act.
- ❑ Requires lenders to obtain and file with the director an annual audit by a certified public accountant.

Sections 408.100-408.210, RSMo in summary include the following provisions:

- ❑ Requires the interest rate to be agreed upon by parties of the contract.
- ❑ Describes acceptable methods of interest computation.
- ❑ Establishes requirements for the contents of a loan contract.
- ❑ Requires paid notes to be returned to the consumer.
- ❑ Requires the release of security.
- ❑ Prohibits false advertising.
- ❑ Gives the director the power and duty to verify the accuracy of interest calculations and refunds.

Sections 408.551-408.562, RSMo establish the following consumer protection provisions:

- ❑ Requires the lender to give a defaulting consumer a written notice of default and an opportunity to cure the default before acceleration of the unpaid balance or repossession of the security interest may occur.
- ❑ Places limits on the taking of collateral on loans if the amount financed is less than \$500.
- ❑ Requires strict compliance with the surplus/deficiency requirements of the uniform commercial code when disposing of collateral.

APPENDIX II

- ❑ Requires strict compliance with all laws under pain of punitive damages and attorney fees.
- ❑ Establishes provisions for refunding procedures in the event of pre-payments.
- ❑ Requires posting of interest rates.

These lenders are also subject to 4 CSR 140-5.010 and 4 CSR 140-5.020 of the Code of State Regulations. These provisions establish a framework for the audit report required under Chapter 367, minimum record keeping requirements to facilitate examinations by the division, and limitations upon the sale of insurance by small loan companies in connection with their lending activities.

Payday Lenders

Payday loan statutes were developed in 1991. Section 408.500 of the RSMo, and 4 CSR 140-11.010 and 4 CSR 140-11.020 of the Code of State Regulations prescribes additional provisions for payday lenders. A typical payday loan is a 14-day, unsecured loan for less than \$500. Payday lenders must be registered with the director of the Division of Finance and pay an annual registration fee of \$300. Lenders are required to file a rate schedule with the director who, upon review, shall approve the rates comparable with those lawfully charged in the marketplace for similar loans. The statute also allows payday lenders to charge rates “allowed on similar loans in the states contiguous to Missouri.” The Division of Finance has approved three different rate schedules: Missouri Rate Schedule, Tennessee Rate Schedule, and Oklahoma Rate Schedule.

The structure of the rates is as follows:

- ❑ Missouri rate: \$10 loan fee plus 5 percent interest per month (or 14-day cycle) with a minimum term of 14 days and a maximum term of 10 months. This rate schedule prohibits interest from being discounted or deducted from the loan proceeds or compounded, and permits the finance charge to be computed as an add-on rate.
- ❑ Tennessee rate: 15 percent fee with a maximum fee of \$45. Loans may have any term, but loans with a term less than 14 days may not be renewed. Loans may not earn post-maturity interest.
- ❑ Oklahoma rate: Rate varies and is established annually by the State of Oklahoma. Loans must have a minimum term of 30 days. Loans may not earn post-maturity interest, however, monthly payment loans may be eligible for late charges.

State Regulation (4 CSR 140-11.010) establishes guidelines concerning obtaining licenses, which locations will require a license, and other general provisions. State Regulation (4 CSR 140-11.020) establishes minimum record keeping requirements to facilitate examination and regulation processes.

APPENDIX II

Title Lenders

The title loan statutes were promulgated in 1998 in Sections 367.500-367.533. A title loan is generally a 30-day loan for an amount less than \$5,000. All interest and fees are earned at the time the loan is made, and therefore, there is no refunding if the loan is paid before the maturity date. Loans made pursuant to this section are secured by a titled personal property, primarily automobile titles, and they are dramatically different from traditional auto loans.

One of the first differences is that a lender may only look to the collateral to satisfy the consumer's debt. Second, there is a unique rate structure consisting of an interest rate and a fee that is permitted to offset the cost of doing business. The fee is ambiguous as there are no guidelines given on this fee other than it being to defray costs. Finally, consumer protection laws concerning repossessions and the disposition of collateral do not apply to these loans. Therefore, repossession can take place without any notice or opportunity to cure the default. A repossession changes the ownership of the vehicle from the consumer to the lender and ends the transaction. There is no compliance with the uniform commercial code so if there is a surplus, the lender may keep it; while if there is a deficiency, the lender must absorb it.

The statutes governing these types of loans include the following provisions:

- ❑ Grants the Division of Finance authority to regulate lending on titled property.
- ❑ Requires lenders to be registered with the director of the Division of Finance and pay an annual registration fee of \$1,000.
- ❑ Establishes qualifications for license applicants and requires lenders to maintain a minimum of \$75,000 in capital.
- ❑ Establishes loan requirements and content requirements of the loan agreement.
- ❑ Establishes the amount charged for a title loan to be 1.5 percent interest plus a fee to defray the ordinary costs of operations (no limits set on the fees).
- ❑ Establishes record keeping requirements and certain initiations for title lenders.
- ❑ Requires lenders to maintain premises liability insurance of no less than \$1 million per occurrence for the benefit of consumers and employees who work or visit the lending office.



APPENDIX III

Bob Holden
Governor

DIVISION OF FINANCE

Joseph L. Driskill
Director

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April 4, 2001

Hon. Claire C. McCaskill
Missouri State Auditor
Truman State Office Building
Room 880
Jefferson City, Missouri 65101

Dear Ms. McCaskill:

We have reviewed the draft of the performance audit concerning the "instant loan industry." I would like to note at the outset that we appreciate the auditors' attitude and professionalism. We also welcome this opportunity to comment. Our comments for each recommendation in your report are attached to be inserted as our responses in the report.

The first set of recommendations, all directed at the General Assembly, appear on page 7. You should be aware of a legislative initiative concerning these lenders, HB 738, which we have helped draft and fully support; for your convenience, we have attached a copy of the bill. The number of renewals issue is addressed for title loans on page 6, line 14 and for payday loans on page 14, line 47. An earlier version of HB 738 would have limited the total amount of payday loans a borrower could have statewide, but this was removed from the bill as the committee decided it was impractical and unenforceable. One recommendation in your report is that "due process" be required for title loan customers who suffer repossession and sale of their vehicles; notices of default/rights to cure and the protections of the UCC are mandated for title loan borrowers by the provisions of HB 738; see page 7, line 32.

A recommendation also appears on page 9, namely that the General Assembly re-visit the instant loan area and seek consistency in the interest of fairness and to eliminate confusion. Again, HB738 has been drafted to make the availability of consumer protections and application of the UCC consistent.

There are two recommendations directed at the Division complaint resolution process detailed on page 12. At the outset, I must say that we are very proud of our complaint resolution efforts and would compare them to any other program in the

APPENDIX III

country. We have worked long and hard to bring prompt satisfaction to citizens with complaints. We conducted a survey of consumer satisfaction with our process and the results were an overall rating of 4.19 on a 1 to 5 scale with 5 being the highest; for your convenience, we have attached a copy of that survey. However, the recommendation is made that we develop specific guidelines to help ensure consistent handling of complaints. We have developed such guidelines, a copy of which is attached.

Page 12 also suggests that we improve consumer awareness of the complaint process. We plan to require lenders to post prominently in their offices the name, address, and telephone number of the Division of Finance. We will also ask that existing bills be amended to require this posting.

That same page recommends that the General Assembly explicitly assign the responsibility for complaint resolution to the Division. We, of course, would not object to a legislative change, but we do note that we have never allowed claims of jurisdictional limits to interfere with our efforts.

Pages 16 and 17 state three more recommendations. First, it is suggested that we develop more formal guidelines to assure consistency in examination scheduling. We feel obliged to respond that at least some of the perceived problem comes from the explosive growth in numbers of licensed lenders, especially payday and title lenders. The suggestion does, of course, have merit and we have already begun work on formalizing the written guidelines, which must be shaped to fit our resources.

Second, it is recommended that we devise a timetable for re-examination of less-than-satisfactorily-rated licensees. This was recognized as a problem prior to the completion of the audit, and we have already implemented a 90-day return visit policy.

Finally, the report recommends that the General Assembly enact laws to help the Division enforce the statutes. HB 738 addresses this concern.

Again, thank you for the opportunity to respond.

Very truly yours,



D. Eric McClure
Acting Commissioner

DEM:tkp
Enclosures

APPENDIX III

The following are the Division's responses to the Auditor's Office Recommendations directed at the Division:

Develop specific guidelines for handling complaints related to the instant loan industry to ensure consumer complaints are handled in a consistent manner. This would include developing specific procedures for processing complaints.

The Auditor's Report is not accurate in stating that "the Division has not established basic standards for handling complaints." The Division does have the very highest standards for assisting consumers with complaints. These standards, which were explained in detail to the Auditor's Office personnel, have been followed routinely for more than at least twenty years. It is true that we had not committed our standards and procedures to writing. We have now done so and the written procedures are attached. The written guidelines follow our previously established procedures, which have been very effective and efficient in our effort to assist consumers in the complaint process. We have also attached the results of a survey of complainants conducted last year. The survey asked the complainants' to rate satisfaction with our performance. The overall grade was 4.19 on a scale of 1 to 5, with 5 being the best. The survey was sent to all complainants filing a written complaint between January and July 2000.

The report discusses our record keeping of complaints. Telephone initiated complaints are frequently resolved quickly and efficiently, often with all parties satisfied. It is our policy that all complaints handled in the field be documented with a memo either via mail or email (of course, we cannot say that there is never a lapse). Whenever a complaint does begin with or result in a written document, a file is created. We have established a good record keeping system for written complaints. Complaints received and handled exclusively by phone are rarely documented due to volume and limited resources. The recommended suggestion in the audit to keep written records of every telephone complaint would result in more time spent on internal paperwork and less time spent on solving consumers' problems.

Consider developing methods to improve consumer awareness of the complaint process.

The report calls for efforts in getting this Division's name, address, and telephone number (preferably toll-free) before the borrowing public. We agree that consumer awareness of our complaint process should be improved. We will send a directive to all of our consumer credit licensees, requesting that they conspicuously post in their lending offices the Division's address and

telephone number along with an explanation to consumers to call the Division for consumer complaint assistance and resolution. We will also recommend that legislation be adopted requiring this posting. (We do not believe, however, including the address of the Division in all contracts is advisable as one such company already does this and we frequently receive payments from borrowers who mistake our address for that of the lender. Also, because the Attorney General already has a consumer toll-free hotline from which some complaints are referred to us, we believe creating a second hotline for use by the Division is not the most efficient way to address the issue.)

- 4.1 Develop specific guidelines to ensure instant loan businesses are examined in a consistent manner.

The Auditor's report is not fully accurate when it states "there are no specific guidelines on how the ratings are assigned." In fact, as the report acknowledges, we do have guidelines on how ratings are assigned. Further, as the report does not mention, these general guidelines become more specific as they are applied in each examination to a number of specific categories, such as credit insurance, various types of lending and management. Each institution gets a rating in each applicable category and then gets an overall rating. We will revise our general guidelines to word them as objectively as possible, keeping in mind that the judgment of the examiner is a material part of reaching examination conclusions.

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The cover letter that accompanies the Auditor's report states that "Examination procedures and the related laws are not adequate to properly monitor and regulate the instant loan industry." The report does not appropriately support the conclusion that the Division's examination procedures are inadequate to properly monitor our licensees. In fact, the report does not cite a single instance in which the laws were not properly enforced against licensees.

However, the Division agrees that the laws governing payday and title loan companies are in need of revision. We are supporting HB 738 to accomplish this goal. The report notes a lack of consistency in authority granted by the various statutes and notes that the title loan law does not require certain basic consumer protections or compliance with the UCC. We, too, have been concerned about the absence of and inconsistencies in consumer protection; if passed, HB 738 should correct these problems.

- 4.2 Develop a timetable for examinations to be performed and ensure subsequent examinations of businesses that received less than satisfactory ratings are performed on a timely basis.

As explained to the Auditor's Office personnel, the Division has had a policy for frequency of examinations. We agree with the recommendation to commit these examination frequency guidelines to writing. We also believe the policy can be approved upon. Since the audit, we have begun work on a more formal examination policy. We are now generally requiring repeat 4 and 5 rated and even some problem 3 rated companies to come to Jefferson City to discuss their problems and plans for improvements. We believe a large part of the problems with apparent examination procedure inconsistencies stems from the very rapid growth in the number of licensed consumer finance companies which now total approximately 1,800, many of them very new. Many of the title loan companies were initially licensed in 1999 as the law only became effective in late 1998. It is common for initial examinations to have less than satisfactory results, but we generally see significant improvement immediately thereafter. Our field examiners often provide training to the new companies and work closely with them to improve their compliance. We have increased our consumer credit field examiner staff by 50% (from 6 to 9) in the past two years. We expect compliance to improve as the newer licensed offices get past the initial review and gain experience.

Missouri Division of Finance
Customer Service Survey Results

APPENDIX III

Timeliness	Knowledge	Courtesy	Overall Quality	Nature of Inquiry	Additional Comments
4	3	2	1	Credit reporting agency failing to correct false information.	Credit reporting agency did not correct or address all issues. Your office sent a letter saying the issue was resolved. It's not! I already sent a letter of explanation.
1	1	1	1	Bank fees	
5	5	5	5	Mortgage account assistance.	Thank you!
5	5	5	5	Inappropriate loan fees.	
5	5	5	5	Problems with credit report.	I am very very happy.
5	3	3	4	Bank stopped or blocked my acct for no reason - it took many phone calls and persistence that I was who I was - 3 months - it took to clean it up and I banked at UMB for 34 yrs.	Customer service is out the window. All the mergers have created a BIG mess - the little person (who by the way made banks what they are) has no rights - it doesn't mean more policing should be taken - banks have become too liberal. (Comments are hard to follow, may not be correct)
5	5	5	5	Escrow increases from finance company.	Thank you.
4	5	3	4	Harassment of account from credit card co.	
5	5	5	5	Scam.	Keep doing what you all are doing! Work is very good. Your response is good.
5	5	5	5	Problems with our mortgage company.	Outstanding. We tried so hard to go through the customer service dept at Chase Mortgage to resolve our problem and no one would listen. We can not thank your dept enough for your help - you saved us over \$3,000 in over charges! Thank you, thank you!!
5	5	5	5	Release of property.	Thank you
5	5	5	5	Chase Bank of N.Y. pestering me.	I haven't heard from Chase since I called you. Tks.
5	5	5	5	Loan funding problems with Gold Banc/Regional Investment.	Thanks for your intervention.
5	5	5	5	I was hoping you could help with repossession fees I didn't believe I should have to pay.	Thank you for trying to help.
5	5	5	5	Escrowed Insurance.	
5	5	5	5	Illegal collection tactics/account manipulation by finance company.	Steven Geary was exceptionally helpful and effective in controlling a finance company that was running amuck - coming by my house, calling me daily at work, etc. I am very grateful to Mr. Geary.

Missouri Division of Finance
Customer Service Survey Results

APPENDIX III

Timeliness	Knowledge	Courtesy	Overall Quality	Nature of Inquiry	Additional Comments
1	1	1	1	1 My bank misappropriated funds from my escrow account.	The letter I received with this card show that Steven Geary still doesn't understand the nature of my case or that he doesn't care to protect the public of Missouri from fraudulent banking practices.
5	5	5	5	5 How long a mortgage company could hold money due to a contractor.	Steven Geary, was very polite and knowledgeable. I could not have asked for the situation to be handled any more timely than he handled it. Thank you.
5	5	5	5	5 Bank would not pay dividends on time.	Thanks.
5	5	5	5	5 Finance dept PMI insurance cancellation.	Excellent service. Mr. Steven Geary was very helpful!
5	5	5	5	5 Our loan on our home wasn't disclosed properly and they had a 2 nd mortgage on our property which had been paid.	Everyone we dealt with was great. We appreciate everything that was done to help us.
5	5	5	5	5 IRA account being handled wrong.	Thank you.
2	3.5	4	2	2 Safe deposit box with 4 keys at UMB Monett, Mo.	
*5	5	5	5	5 Error made by Mo. based firm.	*Exceptional based on my experience with this matter. Thank you very much.
4	5	5	5	5 Help with collection.	Thanks.
5	5	5	5	5 Unable to get mortgage company to correct their billing mistake.	The mortgage company responded and solved the problem. Without the help of this office it would still be ongoing. Thank you for your prompt, courteous, knowledgeable help.
5	4	4	4	4 PMI insurance coverage not wanted.	More thoroughness to ascertain the extent of overpayment and the amount of payback.
5	5	5	5	5 Interest charged.	Thank you so very much. I truly appreciated your work.
3	3	3	3	3 Unauthorized debt in checking account.	Not much was done by the dept of finance.
4	??	4	4	4 Overcharge of interest.	Thanks.
4	4	5	4	4 I called to report harassment for collection of debt.	Once I finally got the correct phone number everyone was very helpful.
1	4	5	5	5 Ameriquest false statements to me caused me to lose \$500 in attorney fees.	I will continue to correspond til I get the \$500 back Ameriquest owes me. Thank your for you help.
3	??	3	3	3 Promised mortgage not fulfilled.	I feel a lock in on a loan is a promise to deliver. Apparently it is not.
5	5	5	5	5 Bank problems.	

Missouri Division of Finance
Customer Service Survey Results

Timeliness	Knowledge	Courtesy	Overall Quality	Nature of Inquiry	Additional Comments
				a	
1	3	4		mortgage co. question.	
4	3	3	3	To stop bank harassing phone calls.	
3	2	1	1		
5	5	5	5	Original loan was not paid in full, leaving two loans.	
5	5	5	5	Providian Financial.	Thank you very much for your help.
5	5	5			
5	5	5	5		
	5	5	5	Payoff issue with another lender.	Always prompt, fair and professional. Thanks!
1	4	4	3	Complaint against Diners Club.	
	5		5	Forced insurance applied by mortgage company when insurance was current.	Thank you very much.
	5	5	5	Forced insurance by First Nationwide Mortgage with no documentation.	As my letter of July 14 attests, you have done an exceptional in solving our problem.
1	3	5	4	Refinancing a home, problems experienced with lender.	Trying to deal with this problem over the phone doesn't give Mr. Geary the full "picture" of problem. But he has been trying to help me solve it.
??	??	5	??	Conseco paid a contractor without our knowledge for work that's still not done.	Conseco hasn't answered you yet, so it's hard to rate much before anything happens.
1	4	4	4	Investigating a bank for proof of forced insurance place on my account.	I'm satisfied with outcome, however I would've liked to have seen "Exhibit A" claimed in the bank's statement.
1	1	1	1	N.C.C. National Credit Counseling out of Springfield Mo.	I sent proof plus receipt etc and nothing still was done about the matter. I finally gave up.
4.33	4.27	4.29	4.19		

COMPLAINT RESOLUTION POLICY

The Division is committed to thorough, expeditious complaint resolution and to avoiding the "bureaucratic shuffle" whenever and wherever possible. To this end, we will always attempt to use the quickest means available whether it be by phone, fax, or email, and we will "assume jurisdiction" rather than passing the citizen off to another agency, if we believe we can assist, whether that be by providing information or actual intervention.

a. A permanent file will be created for all complaints received by mail; a complaint received via email will be printed as hard copy and thereafter treated as a mail complaint. Simple written requests for copies of laws or pamphlets will be handled by the clerical staff and closed with a written notation that the materials have been sent. Likewise, such straightforward written "complaints" as the inability to locate an address or telephone number on an office (which has e.g. moved or merged out of existence) will be handled by the clerical staff using the telephone if possible or by brief responsive note prepared by the clerical staff but signed by the section supervisor.

b. Inquiries by telephone will, similarly, be handled by the clerical staff where possible, in the interest of expediency. Generally, there will be no file created for a telephone complaint which is promptly resolved without otherwise necessitating a writing.

c. Written and verbal complaints which go on to the section supervisor will be given a quick initial review to see if a simple resolution can be had. Where some action is necessary, the supervisor will use the phone, using conference calling to bring the parties together where this is feasible; some judgement must be exercised to avoid the hostile citizen unwittingly sabotaging the mediation process. Where the complexity of the complaint, the location of the complainant/company or the facts will not permit a telephone resolution, the officer will dictate a letter which should lay out the facts, ask for consideration of the circumstances and, where suitable, suggest a resolution. Note that a telephone complaint might at this point become a hardcopy complaint with a permanent file and designated by a unique number. If a response is not received in 30 days, a follow-up letter using standard language should be prepared by the clerical staff, using the computer signature of the section supervisor, and sent certified return receipt mail. In nearly all cases, the complainant should be copied with the letter going to the company.

d. In the unusual case where the complexity of the case or other circumstances require on-site review (or a word with a manager best known to the examiner), the examiner should be paged and briefed, generally by the section supervisor. Instructions should be to use the telephone if possible and, as feasible, for the examiner to report to the citizen and the section supervisor by telephone and then to create a memo to the section supervisor summarizing the complaint and resolution, to be sent either by email or by regular mail.